

Matthew D. Ross (SBN 84703)  
 LEONARD, CARDER, LLP  
 1330 Broadway, Suite 1450  
 Oakland, CA 94612  
 Tel: (510) 272-0169  
 Fax: (510) 272-0174

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITE HERE LOCAL 2; SAN MATEO HOTEL )  
 EMPLOYEES & RESTAURANT EMPLOYEES )  
 WELFARE FUND; SAN MATEO HOTEL )  
 EMPLOYEES & RESTAURANT EMPLOYEES )  
 PENSION FUND; SHERRI CHIESA, JAMES )  
 BEARD, HAL BOBROW, MIKE CASEY, THO )  
 DO, and RICHARD ROMANSKI, Trustees of the )  
 San Mateo Hotel Employees & Restaurant )  
 Employees Welfare and Pension Funds, )

Plaintiffs,

v.

SFO GOOD-NITE INN, LLC, a California limited )  
 liability company; ERIC YOKENO, an individual; )  
 and BANG JA KIM, an individual, )

Defendants.

Case No. C07-02588 BZ

**FIRST AMENDED COMPLAINT  
 FOR DELINQUENT FRINGE  
 BENEFIT CONTRIBUTIONS  
 (ERISA §§502, 515; LMRA §301)**

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FIRST AMENDED COMPLAINT  
 (ERISA §§502, 515; LMRA §301)

LEONARD CARDER, LLP  
 ATTORNEYS  
 1330 BROADWAY, SUITE 1450  
 OAKLAND, CALIFORNIA 94612  
 TELEPHONE: (510) 272-0169 FAX (510) 272-0174



I.

JURISDICTION AND VENUE

1. This is an action brought by Plaintiff trust funds and union for declaratory and injunctive relief, for an accounting, and to collect unpaid union dues and delinquent fringe benefit contributions owed pursuant to the terms of a collective bargaining agreement and employee benefit plan trust agreements. Specifically, the First Amended Complaint seeks to collect unpaid dues and trust fund contributions.

2. The jurisdiction of this court is invoked pursuant to Sections 502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C., §§ 1132 and 1145 and Section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185. Jurisdiction also exists under 28 U.S.C. § 1337 and § 2201.

3. Venue is proper in this Court pursuant to 29 U.S.C. § 185 because the collective bargaining agreement and trust funds are administered in this district, the breaches occurred here, and the Defendant employer resides here.

II.

PARTIES

4. Plaintiff UNITE HERE LOCAL 2 ("Union" or "Local 2") is, and at all times material herein has been, the sole and exclusive collective bargaining representative for all housekeeping and maintenance employees employed by Defendant SFO GOOD-NITE INN, LLC ("Employer" or "Good-Nite Inn"). Local 2 is a "labor organization" within the meaning of the LMRA and is the legal successor in law and fact of the San Mateo Hotel Employees and Restaurant Employees, Local 340.

FIRST AMENDED COMPLAINT  
(ERISA §§502, 515; LMRA §301)

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1  
2 5. Plaintiffs SAN MATEO HOTEL EMPLOYEES & RESTAURANT  
3 EMPLOYEES HEALTH & WELFARE FUND ("Welfare Fund"); SAN MATEO HOTEL  
4 EMPLOYEES & RESTAURANT EMPLOYEES PENSION FUND ("Pension Fund")  
5 (collectively hereafter "TRUST FUNDS") are express trust funds organized and existing under  
6 the laws of the United States as employee benefit plans with their principal place of business  
7 located in San Mateo County in the State of California. The TRUST FUNDS were created by  
8 written trust agreements pursuant to Section 302 of the LMRA, 29 U.S.C. § 186. TRUST  
9 FUNDS are also multi-employer employee benefit plans as defined by ERISA, 29 U.S.C.  
10 §1002(3) and (37)(a), 29 U.S.C. § 1003, AND 29 U.S.C. §1132(d)(1).  
11

12 6. Plaintiffs SHERRI CHIESA, JAMES BEARD, HAL BOBROW, MIKE  
13 CASEY, THO DO and RICHARD ROMANSKI (collectively, "Trustees") are trustees and  
14 fiduciaries of the TRUST FUNDS within the meaning of ERISA Sections 3 and 401 et seq., 29  
15 U.S.C. §§ 1002, 1101 et seq. As trustees, Plaintiff TRUSTEES have the duty, jointly exercised  
16 with each other, to administer the TRUST FUNDS for the exclusive benefit of covered  
17 employees in accordance with the provisions of LMRA Section 302, ERISA and the terms of  
18 the TRUST FUNDS' written trust agreements.  
19

20 7. Defendant GOOD-NITE INN, a California Limited Liability Company, is an  
21 employer within the meaning of 29 U.S.C. §152(2) and 29 U.S.C. §1345. Defendant Employer  
22 is a hotel near the San Francisco International Airport in South San Francisco and is, and at all  
23 material times herein has been, obligated to deduct and pay union check-off dues to Local 2 and  
24 to make employer contributions to the TRUST FUNDS pursuant to a collective bargaining  
25 agreement between Defendants and/or Local 2's predecessor, the San Mateo Hotel Employees  
26

1  
2 and Restaurant Employees, Local 340, and/or Local 2. Defendant GOOD-NITE INN's address  
3 is 245 S. Airport Blvd., S. San Francisco, CA 94080.

4 8. Defendants ERIC YOKENO ("Yokeno") and BANG JA KIM ("Kim") are the  
5 principal owners and/or operators and/or managing partners of Defendant GOOD-NITE INN.  
6 On information and belief, at all times relevant herein, they have held a strong and controlling  
7 interest in the operations of the hotel in the time period covered by this lawsuit. The collective  
8 bargaining agreement in effect between Local 2 and GOOD-NITE INN imposes personal  
9 liability on the individual owners for failure to pay contributions in accordance with the trust  
10 agreement for the Welfare Plan.  
11

12 9. On information and belief, Defendants GOOD-NITE INN and YOKENO and  
13 KIM were at all times mentioned herein joint employers, alter egos or a single employer within  
14 the meaning of the LMRA.  
15

16 III.

17 FACTS

18 10. Wyndham International, d/b/a Ramada Inn North ("Wyndham") and the Union<sup>1</sup>  
19 were signatories to a collective bargaining agreement covering the hotel's housekeeping and  
20 maintenance employees that was effective from December 5, 1999 through November 30, 2003.  
21 Wyndham and the Union, agreed to a one-year extension of the collective bargaining agreement  
22  
23

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24 <sup>1</sup>At the time this collective bargaining agreement was executed, the signatory union  
25 was the San Mateo Hotel Employees and Restaurant Employees, Local 340, which merged  
26 with UNITE HERE! Local 2. For the sake of simplicity, hereafter "Union" will refer to  
27 either Local 340, for the period prior to the merger, or Local 2, for the period subsequent to  
28 the merger.



1  
2 through November 30, 2004. In March 2004, Defendant GOOD-NITE INN purchased  
3 Wyndham and assumed the collective bargaining agreement ("Agreement").

4 11. In August 2004, the Union and Employer began negotiations for a new contract.  
5 When bargaining had not been completed by the end of the Agreement, the contract was  
6 extended during negotiations for a successor agreement by virtue of both a clause in the  
7 underlying Agreement and an agreement of the parties. However, on September 14, 2005,  
8 while the Agreement was still in effect, Defendant GOOD-NITE INN withdrew recognition of  
9 the Union, asserting that a majority of its employees no longer desired exclusive representation  
10 by Local 2.  
11

12 12. On October 14, 2005, the Union filed unfair labor practice charges against the  
13 Defendant with the National Labor Relations Board ("NLRB"), which issued a complaint  
14 against Defendants. On September 28, 2006, on NLRB Administrative Law Judge (the "ALJ"),  
15 Jay Pollack, found that as a matter of law, Defendant's withdrawal of recognition during the life  
16 of a contract was a violation of the National Labor Relations Act, as amended. The ALJ also  
17 found that the employee petitions based upon which Defendant withdrew recognition were  
18 tainted by its unfair labor practices.  
19

20 13. At all times material herein, Defendants were contractually bound under the  
21 Agreement and trust agreements incorporated therein, to contribute to the TRUST FUNDS on  
22 behalf of all eligible GOOD-NITE INN employees in accordance with the trust agreements, the  
23 Welfare Plan, the Pension Plan and the rules and regulations adopted by the TRUSTEES.  
24 Plaintiff TRUST FUNDS were established by a restaurant and hotel owners  
25  
26  
27

1  
2 association and one labor organization in the hotel, restaurant and hospitality industry in San  
3 Mateo County. Pursuant to written trust agreements incorporated in the Agreement and  
4 executed by the San Mateo County Restaurant - Hotel Owners Association and the Union, the  
5 TRUST FUNDS were established for the sole and exclusive purpose of providing health and  
6 related benefits and pension benefits to employees (and their beneficiaries) covered by contracts  
7 between Local 2 and employers in the industry who are signatory to the collective bargaining  
8 agreements.  
9

10 14. Specifically, the Agreement at Sections 39 and 40, *Health and Welfare Fund*  
11 and *Pension Fund*, respectively, obligate Defendant GOOD-NITE INN to contribute to and  
12 participate in the TRUST FUNDS. Defendants have failed to fulfill this obligation since  
13 September 2005 to the present.  
14

15 15. The Agreement provides further that Defendants YOKENO and KIM are  
16 personally liable for such contributions to the Welfare Plan, including liquidated damages and  
17 interest.  
18

19 16. At all times material herein, Defendant GOOD-NITE INN was contractually  
20 bound under the Agreement, and trust agreements incorporated therein, to report monthly to the  
21 TRUST FUNDS all employment information necessary for the TRUST FUNDS to determine  
22 which employees were entitled to health, welfare and related benefits, pension benefits and how  
23 much money Defendants were obligated to contribute to TRUST FUNDS to provide for these  
24 benefits. Defendants have failed to fulfill this obligation since September 2005 to the present.  
25

26 17. At all times material herein, Defendant GOOD-NITE INN was contractually  
27



1  
2 bound under the Agreement to make payments under the Union security agreement provisions.  
3 Specifically, the Agreement at Section 33 *Dues Check-off* obligates Defendant GOOD-NITE  
4 INN to deduct from its employees' paychecks the union-designated amount fees and dues on a  
5 monthly basis. Defendants have failed to fulfill this obligation since September 2005 to the  
6 present.

7  
8 18. Defendant GOOD-NITE INN owes \$208,018.44 to Plaintiff TRUST FUNDS  
9 employer contributions for the period between September 2005 to the present. This  
10 \$208,018.44 total is broken down as follows: \$187,404.00 in principal and liquidated damages;  
11 \$20,614.44 in interest accrued as of June 1, 2007. (See table at Paragraph 21.) Defendants  
12 YOKENO and KIM are both personally liable for \$168,494.93, which amount reflects these  
13 two Defendants' Welfare Fund contribution obligations.

14  
15 19. Defendant GOOD-NITE INN owes \$18,005.32 to Plaintiff UNION union dues  
16 for the period between September 2005 to the present under the Union Security provisions in  
17 the Agreement. This \$18,005.32 is broken down as follows: \$16,282.40 for unpaid dues;  
18 \$1,722.92 in interest.

19  
20 20. Because Defendants have failed to supply the UNION and the TRUST FUNDS  
21 information as required by the Agreement and trust agreements incorporated therein, the  
22 amounts in Paragraphs 18 and 19 necessarily are estimates. Plaintiff believes and alleges that  
23 the principal monthly amounts owed to the UNION and TRUST FUNDS for the period after  
24 September 2005 are no less than those amounts that would have been owed for work performed  
25 in the most recent month in which Local 2 members worked for Defendants. Therefore, the  
26 delinquency estimate for the period as set forth in Paragraph 18 is based on the current number  
27

28 FIRST AMENDED COMPLAINT  
(ERISA §§502, 515; LMRA §301)

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of Defendants' employees and the contribution rates for the Welfare Fund and Pension Fund. The delinquency for the period as set forth in Paragraph 19 above is also estimated based on the current number of Defendants' employees and the current union dues rate (20 employees; \$36.46 per employee per month from 9/05 to 12/06; \$38.46 per employee per month from 1/07 to 6/07).

21. Accordingly, as of today's date, June 27, 2007, Defendants are obligated to the UNION and TRUST FUNDS for the following amounts.

<u>Trust Fund Contributions</u>	<u>Union Dues</u>
\$208,018.44 owed by Defendant Good-Nite Inn	\$18,005.32
\$168,494.93 owed by Defendants Eric Yokeno and Bang Ja Kim	
<b>TOTAL = \$226,023.76</b>	

22. In addition, Defendants are liable for Plaintiff's attorneys' fees, to be determined at the conclusion of this litigation.

### FIRST CLAIM

23. The First Claim is an action to enforce a collective bargaining agreement. Jurisdiction arises under 29 U.S.C. §185(a).

24. Plaintiff UNION realleges and incorporates by reference Paragraphs 1 through 22 hereinabove as if set out in full.

25. Plaintiff UNION is a party to the Agreement described in Paragraph 10 hereinabove, as the Agreement requires Defendants to make certain contributions to the TRUST FUNDS.

26. Plaintiff TRUST FUNDS are third party beneficiaries to the collective



1  
2 bargaining agreement described in Paragraph 10 hereinabove, as the Agreement requires  
3 Defendants to make certain contributions to the TRUST FUNDS;

4 27. Defendants have failed and refused to make the contributions as required under  
5 the Agreement. Plaintiff TRUST FUNDS are entitled to the principal owed, liquidated  
6 damages, prejudgment interest, attorneys fees, and collection costs as required by the trust  
7 agreements, which are incorporated into Agreement.

8  
9 SECOND CLAIM

10 28. The Second Claim is also a claim under 29 U.S.C. §185(a).

11 29. Plaintiff UNION realleges and incorporates by reference Paragraphs 1 through  
12 22 hereinabove as if set out in full.

13 30. Plaintiff UNION is a party to the Agreement described in Paragraph 10  
14 hereinabove, and the Agreement requires Defendants to make certain deductions from GOOD-  
15 NITE INN employees' paychecks the union-designated amount of initiation/ reinstatement fees  
16 and dues for the classification of work in the pay period preceding the fifth (5<sup>th</sup>) day of the  
17 month and remit the same to the Union no later than the twentieth (20<sup>th</sup>) day of the same month.

18 31. Defendants have failed and refused to make said deduction and payment of  
19 union dues as required under the Agreement. Plaintiff UNION is entitled to the principal owed,  
20 prejudgment interest, attorneys fees, and collection costs.

21  
22  
23 THIRD CLAIM

24 32. The Third Claim is an action brought under ERISA to collect delinquent fringe  
25 benefit contributions. Jurisdiction arises under 29 U.S.C. §1132(a)(3)(B)(ii) and 1132(g)(2)(e).

26 33. Plaintiff TRUST FUNDS reallege and incorporate by reference Paragraphs 1  
27



1  
2 through 22 hereinabove as if set out in full.

3 34. Sections 502 and 515 of ERISA (29 U.S.C. §§ 1132, 1145) provide a cause of  
4 action for the collection of delinquent contributions owed by an employer to a multi-employer  
5 employee benefit plan under the terms of the plan and/or pursuant to a collective bargaining  
6 agreement.

7  
8 35. Defendants have failed and refused to make the contributions as required under  
9 the TRUST FUNDS governing documents, including trust agreements and the Agreement set  
10 out at Paragraph 10. Plaintiff TRUST FUNDS are entitled to the principal owed, liquidated  
11 damages, prejudgment interest, attorneys fees and costs pursuant to 29 U.S.C. § 1131(g)(2), and  
12 collection costs as required by the trust agreements and federal law.

13  
14 FOURTH CLAIM

15 36. The Fourth Claim is an action to bring an accounting under the terms of  
16 Agreement, and the trust documents and trust agreements therein incorporated. Jurisdiction  
17 arises under 29 U.S.C. §185(a).

18 37. Plaintiff realleges and incorporates by reference Paragraphs 1 through 22  
19 hereinabove as if set out in full.

20  
21 38. The Agreement, which incorporates the Declarations of Trust and Trust  
22 Agreements, as amended, provide that the TRUST FUNDS may require an individual employer  
23 to submit to an audit and must supply the Trust Fund with any information report or  
24 documentation reasonably relevant to and necessary for the administration of the TRUST  
25 FUNDS -- particularly including the determination of employee eligibility for benefits under the  
26



1  
2 TRUST FUNDS and the employer's financial obligation to the TRUST FUNDS for the  
3 coverage of eligible employees.

4 39. By virtue of Defendants' failure to provide to the TRUST FUNDS with the  
5 information necessary to determine employees' eligibility for health and welfare benefits and  
6 pension benefits under the Agreement, and Defendants' financial obligations to the TRUST  
7 FUNDS for the provision of these employee benefits, the precise amount of Defendants'  
8 liability to the TRUST FUNDS since September 2005 is not presently known. It is necessary  
9 for the TRUST FUNDS to examine all of the necessary and appropriate payroll books and  
10 records of Defendants, covering all of Defendants' employees for the period since September  
11 2005 until the date of judgment.  
12

13 40. In order to determine the exact amount due from Defendants, Plaintiff TRUST  
14 FUNDS request that this court issue its order compelling Defendants to submit to TRUST  
15 FUNDS' representatives and auditors all of its payroll books and records for the purposes of  
16 inspecting same to determine the amount of contributions due the TRUST FUNDS since  
17 September 2005 under aforesaid collective bargaining agreement, and further, that Defendants  
18 be required to pay the cost of such audit pursuant to the terms of aforesaid collective bargaining  
19 agreement.  
20  
21

22 WHEREFORE, PLAINTIFFS PRAY FOR JUDGMENT AGAINST DEFENDANTS  
23 SFO GOOD-NITE INN, ERIC YOKENO and BANG JA KIM, JOINTLY AND SEVERALLY  
24 AS FOLLOWS:

25 1. That this Court adjudge and declare that Defendants, their successors, agents and  
26 all persons acting in concert with them, as required under the terms of the collective bargaining  
27

28 FIRST AMENDED COMPLAINT  
(ERISA §§502, 515; LMRA §301)

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1  
2 agreements and trust agreements incorporated therein to comply with the mandatory reporting  
3 and contribution requirements;

4           2.       That this Court adjudge and declare that Defendants, their successors, agents  
5 and all persons acting in concert with them, as required under the terms of the collective  
6 bargaining agreement to comply with union check-off and dues paying requirements;

7           3.       That Defendants be ordered to submit to an audit and for that purpose to furnish  
8 to TRUST FUNDS' representatives and auditors all of its payroll books and records for the  
9 since September 14, 2005 until the date of judgment, which records shall show the active  
10 employee payroll and all hours worked by all employees of Defendants for each day, week and  
11 month included in said period, and that a referee be appointed to perform such audit and be  
12 further empowered to examine the parties to this action as well as other witnesses, and that a  
13 report of the audit of such accounting be presented to the Plaintiff and the court pursuant to an  
14 interlocutory order herein;

15           4.       For judgment in the amount of unpaid contributions, liquidated damages and  
16 interest;

17           5.       For judgment in the amount of unpaid union dues and interest;

18           6.       For attorneys' fees and costs; and

19           7.       For a preliminary and permanent injunction ordering Defendant GOOD-NITE  
20 INN to pay TRUST FUNDS the entire contribution deficiency, \$208,018.44, plus attorneys'  
21 fees forthwith, and henceforward to make timely contributions in full to TRUST FUNDS  
22 according to the rules of the TRUST FUNDS and the governing Trust Agreements.  
23  
24  
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1  
2 8. For a preliminary and permanent injunction ordering Defendants YOKENO  
3 AND KIM to pay Welfare Fund contributions in the amount of \$168,494.93, plus attorneys'  
4 fees forthwith, and henceforward to make timely contributions in full to TRUST FUNDS  
5 according to the rules of the TRUST FUNDS and the governing Trust Agreements.  
6

7 9. For a preliminary and permanent injunction ordering Defendant GOOD-NITE  
8 INN to pay Plaintiff UNION the entire union dues deficiency, \$18,005.32, plus attorneys' fees  
9 forthwith, and henceforward to make timely payments in full to Plaintiff UNION pursuant to  
10 the Agreement.

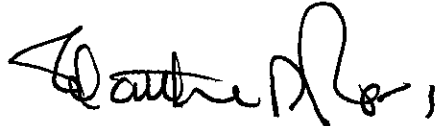
11 10. For other such relief the Court deems just and proper.  
12

13 Respectfully submitted,

14 DATED: June 27, 2007

15 LEONARD CARDER, LLP

16 By:



17 Matthew D. Ross  
18 Attorneys for Plaintiffs  
19  
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**PROOF OF SERVICE**

I am a citizen of the United States and am employed in Alameda County. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1330 Broadway, Suite 1450, Oakland, CA 94612. On June 29, 2007, I served the following document(s):

**FIRST AMENDED COMPLAINT FOR DELINQUENT FRINGE BENEFIT CONTRIBUTIONS; NOTICE OF RELATED CASE**

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as below or stated on the attached service list:

Patrick W. Jordan, Esq.  
Jordan Law Group  
1010 ABC Street, Suite 320  
San Rafael

       **BY ELECTRONIC MAIL:** I caused said document(s) to be transmitted to email address(es) designated.

       **BY FACSIMILE:** I caused said document(s) to be transmitted to the fax number(s) of the addressee(s) designated.

       **BY REGULAR MAIL:** I caused such envelope to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with LEONARD, CARDER's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Services on that same day in the ordinary course of business.

       **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

  X   **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on June 28, 2007.

  
Lorelei Badar